

This is a claim for a February 7, 1996 accident. The Judge found that the February 1996 accident permanently injured claimant's back and neck and aggravated a preexisting psychological condition. Combining a 10 percent whole body functional impairment rating for the back and neck injuries with a 22 percent whole body impairment rating for the psychological impairment, the Judge awarded claimant a 30 percent permanent partial general disability.

Respondent and its insurance carrier contend Judge Benedict erred. They argue that (1) the Judge should have reduced the permanent partial general disability by five percent for preexisting functional impairment and (2) the Judge should have awarded the claimant nothing for the psychological problems. Respondent and its insurance carrier contend that claimant should receive benefits for only a five percent permanent partial general disability.

Conversely, claimant contends that the Judge's findings and conclusions are supported by the record and claimant requests the Award to be affirmed.

The only issues before the Appeals Board on this review are:

1. What is the nature and extent of claimant's injury and disability?
2. Should an amount be deducted for preexisting impairment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed. The Appeals Board agrees with, and adopts as its own, the findings and conclusions stated by the Judge in the Award.
2. The Appeals Board affirms the finding that claimant has a 10 percent whole body functional impairment due to his back and neck. That rating was provided by Dr. William Kossow, who examined claimant at the request of the respondent and its insurance carrier in October 1997.
3. The Board affirms the finding that the record fails to prove that claimant had a ratable functional impairment before the February 1996 accident. The only indication that claimant had any back symptoms before February 1996 was a 1994 office note from another doctor. Dr. Kossow's October 23, 1997 medical report reads, in part:

PAST MEDICAL HISTORY: Significant for diabetes mellitus treated with oral agents, but in fairly poor control. He also has hypercholesterolemia. He has had surgery on tennis elbow in the 1970's. He denies any previous back pain although I reviewed an office note from Dr. Richard Baker dated 8/29/94 which refers to back pain with radiation into the left leg. When specifically asked, the patient states that he had about 4 days of low back pain at that time and it spontaneously resolved and did not recur. He never had any back or neck pain prior to his injury on 2/07/96.

The Appeals Board construes K.S.A. 44-501(c) to require proof that a ratable functional impairment preexisted the work-related accident. Conversely, it is not required that the functional impairment was actually given a rating before the work-related accident

occurred nor is it required that the individual was given formal medical restrictions. But it is critical that the condition actually constituted an impairment in that it somehow limited the worker's abilities or activities. In this case, the evidence fails to establish that claimant's back permanently impaired him before the February 1996 accident and, therefore, it would not be proper to reduce the award for preexisting impairment.

4. The Board finds that claimant either aggravated a preexisting psychological condition or redeveloped a psychological condition as a direct result of the February 1996 accident.

Both of the psychologists who testified, Dr. James R. Eyman and Dr. Marc A. Quillen, agree that claimant is suffering from psychological problems and needs treatment. The difference in their opinions lies in the source of those psychological problems. Dr. Eyman believes that whatever depression claimant had before the February 1996 accident had subsided and that the accident caused physical injury, which lead to depression, which in turn lead to moderate psychological impairment.

Conversely, Dr. Quillen testified that claimant's major depression preexisted the accident, which merely acted as an "organizing event" upon which claimant is now focused. But Dr. Quillen acknowledges that claimant's psychological condition has worsened since the accident.

Considering the psychologists' testimonies, the Appeals Board concludes that claimant's psychological condition has worsened as a direct result of the February 1996 accident.

5. The Appeals Board affirms the Judge's finding that claimant has sustained a 22 percent whole body impairment as a result of the psychological impairment. That conclusion is based upon the testimony of Dr. Eyman.

The Board acknowledges that Dr. Eyman did not use the revised third edition of the *AMA Guides to the Evaluation of Permanent Impairment* to rate claimant's psychological impairment. But the Workers Compensation Act permits other methods for rating impairment when that impairment is not contained in the *Guides*.¹ Because the revised third edition of the *Guides* does not contain a numerical rating for psychological impairments, the doctor was free to use another edition of the *Guides*, or any other publication or method, to rate claimant's impairment.

6. The Judge imputed a post-injury wage and limited claimant's benefits to functional impairment. On this appeal, claimant does not contest the propriety of the Judge's findings and requests that they be affirmed in all respects. Therefore, the Appeals Board affirms

¹ K.S.A. 44-510e(a).

the Judge's findings and conclusions that claimant is entitled to receive benefits for a 30 percent permanent partial general disability, which represents the combined impairments from the physical and psychological injuries sustained as a result of the February 1996 accident.

AWARD

WHEREFORE, the Appeals Board affirms the December 21, 1999 Award entered by Judge Benedict.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Christopher J. McCurdy, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director